

Sexual Misconduct Definitions Reference

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Institutional Sexual Misconduct Policy (Example)

Prohibits sex discrimination, sexual harassment, retaliation, and other prohibited conduct under the policy, including:

- Sex Discrimination
- Sexual Harassment
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking
- Retaliation
- Sexual Exploitation
- Other Inappropriate Sexual Conduct
- False Information & False Complaints
- Interference with the Grievance Process
- Failure to Report (for Responsible Employees)

Policy Differences Note: For the purposes of this training, the UTS Model Policy for Sexual Misconduct will be the primary policy reference. UT Institutional policies may have some differences.

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Source: *UT System Model Policy for Sexual Misconduct (2021)*

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Definition of "Sex Discrimination"

Occurs when an individual is treated less favorably on the basis of that person's sex (including gender), which may also include on the basis of sexual orientation, gender identity, or expression, pregnancy or pregnancy-related condition, or a sex stereotype.

Sexual harassment, as defined in the Model Policy, is a form of sex discrimination.



Source:

UT System Model Policy for Sexual Misconduct (2021)

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Distinctions...

Sexual Harassment

Employee
Quid Pro Quo

Severe
Pervasive
Obj. Offensive

Sexual Assault
Dating Violence
Domestic Violence
Stalking

VS.

Non-Sexual Harassment
Ex. Other Inappropriate Sexual Conduct



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Definition of "Sexual Harassment" under Title IX

Conduct on the basis of sex that satisfies one or more of the following:

1. An **employee** of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct (Quid Pro Quo);
2. Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to the institution's education program or activity; or
3. **"Sexual assault," "dating violence," "domestic violence,"** or **"stalking"** as defined under Clery/VAWA.



Source: Title IX Regulations (2020)

#2 Element Examples



- **"Severe"**: Physically threatening or humiliating; effects of the alleged conduct to a reasonable person (using a "reasonable person" standard)
- **"Pervasive"**: Frequency, duration of the alleged conduct
- **"Objectively offensive"**: To a reasonable person (using a "reasonable person" standard)
- **"Effectively denies...equal access"**: Totality of the circumstances

For example, the degree of the alleged conduct's interference with the CP or effects in an educational setting, type of alleged conduct, frequency and duration of the conduct, knowingly unwelcome in nature



“Reasonable Person” Standard



An objective test to denote a hypothetical person who exercises average care, skill, and judgment in conduct under similar circumstances as a comparative standard.

Definition of “Other Inappropriate Sexual Conduct”

Conduct on the basis of sex that does not meet the definition of “sexual harassment” (under the Model Policy), but is

1. Verbal conduct (including through electronic means), unwanted statements of a sexual nature intentionally stated to a person or group of people, that are objectively offensive to a reasonable person and also so **severe or pervasive** that it created a Hostile Environment, as defined in the Model Policy.
2. Physical conduct...

Source:
UT System Model Policy for Sexual Misconduct (2021)

Definition of “Other Inappropriate Sexual Conduct” (Cont.)

Possible Examples (depending on facts):

- Unwelcome sexual advances (including explicit or implicit proposition(s) of sexual contact or activity);
- Requests for sexual favors (including overt or subtle pressure);
- Gratuitous comments about an individual’s sexual activities or speculation about an individual’s sexual experiences;
- Gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
- Persistent, unwanted sexual or romantic attention;
- Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials;
- Deliberate, repeated humiliation or intimidation;
- Sexual exploitation;
- Unwelcome intentional touching of a sexual nature; or
- Deliberate physical interference with or restriction of movement.



Source:

UT System Model Policy for Sexual Misconduct (2021)

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Definition of “Sexual Assault”

An offense that meets the definition of Rape, Fondling, Incest, or Statutory Rape:

- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.



Source:

UT System Model Policy for Sexual Misconduct (2021)

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Definition of “Dating Violence”

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the consideration of the following factors:

- The **length** of the relationship;
- The **type** of relationship; and
- The **frequency** of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. It does not include acts covered under the definition of Domestic Violence.



Source:

UT System Model Policy for Sexual Misconduct (2021)

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Definition of “Domestic Violence”

A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- By any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.



Source:

UT System Model Policy for Sexual Misconduct (2021)

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Definition of "Stalking"

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

For the purposes of this definition:

- **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.



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Definition of "Sexual Exploitation"

Conduct where an individual takes non-consensual or abusive sexual advantage of another for their own benefit, or to benefit anyone other than the one being exploited.

Examples of sexual exploitation include, but are not limited to: Engaging in voyeurism; forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students/groups; the intentional removal of a condom or other contraceptive barrier during sexual activity without the consent of a sexual partner; and any activity that goes beyond the boundaries of consent, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD) to another.



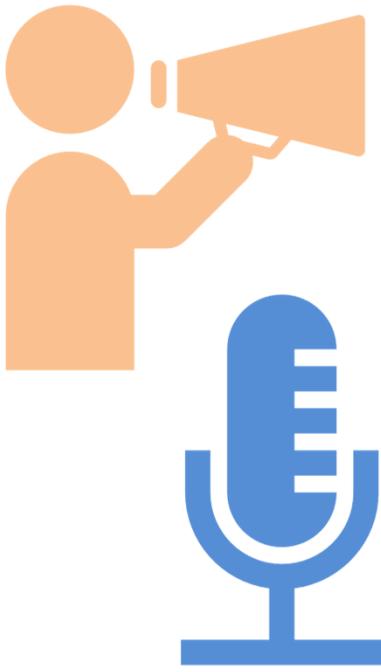
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Source:

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First Amendment Rights: Free Speech & Academic Freedom

Constitutionally protected expression cannot be considered Sexual Misconduct (e.g. “sexual harassment,” “other inappropriate sexual conduct”) under the institution’s Sexual Misconduct policy.

Note: Neither party may be restricted from discussing allegations or from gathering evidence in a grievance process.

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Academic Freedom Analysis

Possible questions and/or issues to consider further:

- a. Is there a sufficient pedagogical nexus to the curriculum and expression at issue?
- b. Does the expression at issue conflict with policies or standards of conduct?
- c. Is the expression at issue being addressed (e.g. investigated, examined) because of its disruptive effect?
- d. Is the expression at issue being addressed (e.g. investigated, examined) because of the content of the speech?
- e. Any mitigating action by the faculty, such as giving trigger/content warnings of the possibly provocative content?



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Retaliation Prohibited under Title IX

No institution or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX; or because an individual has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

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Definition of "Retaliation"

Any **adverse action** (including, but is not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against someone because the individual has made a report or filed a Formal Complaint; or who has supported or provided information in connection with a report or a Formal Complaint; participated or refused to participate in a Grievance Process under this Policy; or engaged in other legally protected activities.

Note: Any person who retaliates against (a) anyone filing a report of Sexual Misconduct or Formal Complaint, (b) the parties or any other participants (including any witnesses or any University employee) in a Grievance Process relating to a Formal Complaint, (c) any person who refuses to participate in a Grievance Process, or (d) any person who under this Policy opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from the University.



Source:
UT System Model Policy for Sexual Misconduct (2021)

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Definition of “False Information & False Complaints”

Any person, who in bad faith, knowingly files a false complaint under this Policy or provides materially false information is subject to disciplinary action up to and including dismissal or separation from the University.

Note: A determination that a Respondent is not responsible for allegations of Sexual Misconduct does not imply a report, Formal Complaint, or information provided was false. Similarly, a determination that a Respondent is responsible for a policy violation does not imply that a Respondent’s statements disclaiming responsibility were false.



Source:
UT System Model Policy for Sexual Misconduct (2021)

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Definition of “Interference with the Grievance Process”

Interference with a Grievance Process may include, but is not limited to:

- Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- Removing, destroying, or altering documentation relevant to the Grievance Process; or
- Knowingly providing false or misleading information to the Title IX Coordinator, investigator or hearing officer, or encouraging others to do so.

Note: Any person who interferes with the grievance process is subject to disciplinary action up to and including dismissal or separation from the University.



Source:
UT System Model Policy for Sexual Misconduct (2021)

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Responsible Employee Reporting Requirements

Under the institution’s Sexual Misconduct Policy, **Responsible Employees** have a duty to report incidents and information reasonably believed to be sexual misconduct (prohibited conduct defined) under the Policy.

All employees are Responsible Employees (except Confidential Employees or police officers when a victim uses a pseudonym form). Responsible Employees include **all** administrators, faculty, and staff.

Responsible Employees must report all known information concerning an alleged incident of sexual misconduct to the **Title IX Coordinator**.



Source:
UT System Model Policy for Sexual Misconduct (2021)

Examples of Confidential Employees?

Privileged communication under law:

- Licensed counselors, psychologists
- Doctors, physician assistants
- Nurses, nurse assistants
- Attorneys, general counsel
- Licensed social workers in a clinical or medical setting

Commonly designated “confidential” employees:

- Victim Advocates (who work with students)
- Student Ombuds



Definition of “Failure to Report” for Responsible Employees

If a Responsible Employee knowingly fails to report all information concerning an incident the employee reasonably believes constitutes stalking, dating violence, sexual assault, or sexual harassment committed by or against a student or employee at the time of the incident, the employee is subject to disciplinary action, including termination.



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